

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.1476 OF 1998

WITH

CIVIL REVISION APPLICATION NO. 1477 OF 1998

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

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SARASVAIDYA SAVITABEN NARSINHBHAI

VERSUS

HARILAL KANJI PATEL & ANR.

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Appearance:

MR JAYANT PATEL for Petitioner

MR YS LAKHANI for Respondent No.1

None present for other Respondent

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Coram: S.K. Keshote, J

C.A.V. JUDGMENT

#. As these two civil revision applications have arisen from the counter suits filed by the parties against each other, the learned trial Court decided the applications ex.5 in both the suits by common order and the appeals filed by the parties against the order of the learned trial court below ex.5 have also been decided by the first appellate court under a common order, I consider it to be appropriate to take up these civil revision applications together and decide these by a common order.

#. As per the case of Harilal Kanji Patel, on 20th June 1997, an agreement to sell of the suit land has been executed by Jivrajbhai Parsottambhai in his favour. The sale consideration was agreed to be Rs.45,000/=. On 2nd May 1998, as per the case of Savitaben Narshibhai, a sale deed of the suit land has been executed by Jivrajbhai Parshottambhai Patel in her favour and the sale consideration thereof was of Rs.50,000/=. These two transactions gave rise to two counter suits, i.e. one by Harilal Kanji Patel being Regular Civil Suit No.109 of 1998 for specific performance of agreement to sell dated 20th June 1997 and another by Savitaben Narshibhai being Regular Civil Suit No.113 of 1998 for declaration and permanent injunction to restrain the original owner as well as the purchaser by agreement to sell not to disturb her possession till conclusion of her suit filed against the purchaser under agreement to sell. She also prayed for declaration of agreement to sell in favour of Harilal to be illegal and inoperative. Harilal, in his suit prayed for injunction against the defendants, i.e. the owner and subsequent purchaser from disturbing his possession till conclusion of suit and for direction to the original owner to execute sale deed. Both the parties in their suits filed applications ex.5 for grant of temporary injunction and the learned trial court, after hearing the parties and considering the evidence produced by them recorded a finding of fact that the purchaser by agreement to sell is in physical and actual possession of the suit land since the date of execution of the Sauda Khat and according to Sauda Khat the remaining amount of consideration has to be paid by 20th June 1998 and thereafter the original owner has to execute the sale deed in his favour. So the learned trial court dismissed the application ex.5 filed by Savitaben Narshibhai in the Civil Suit No.113/98 and

application ex.5 filed by Harilal in Civil Suit No.109/98 has been granted.

#. Smt.Savitaben Narshibhai challenged both the orders of the learned trial Court, i.e. rejection of her application ex.5 and grant of application ex.5 of Harilal K. Patel in two suits by filing two separate appeals. The learned first appellate court under its order dated 30th September 1998 has dismissed both the appeals. Hence these two civil revision applications before this Court.

#. The learned counsel for the petitioner in these two civil revision applications contended that both the lower courts have not taken into consideration the fact that Harilal has no right, title or interest in the suit land. He has only come up on the basis of agreement to sell but section 54 of the Transfer of Properties Act provides that by this agreement to sell, no right, title or interest in the land vests in the vendee. It has next been contended that only when Harilal would have any enforceable right the learned trial Court could have granted injunction but that is not there. Contrary to it, the lady, the petitioner in these two civil revision applications is having right, title and interest in the suit land and she is also in possession of the suit land and as such, the same should have been protected. Carrying this contention further, the learned counsel for the petitioner contended that no injunction could have been granted against the true owner and more so when he executed the sale deed, in a suit filed by a person who is praying therein only for enforcement of agreement to sell.

#. On the other hand, the learned counsel for the respondents contended that both the courts below have recorded a concurrent finding of fact that the respondent is in physical and actual possession of the suit land and while considering the matter of grant of temporary injunction, what the learned counsel for the respondent contended that, the important thing is which of the party is in physical and actual and real possession of the suit property and not the question as what it is contended by the learned counsel for the petitioner, the legal possession or right, title or interest in the suit property. The respondent has an agreement to sell in his favour of the disputed land and he has enforceable right, i.e. of specific performance of the agreement and for a direction to execute the sale deed of the suit land in his favour. The vendee has been given possession and that possession is a valid possession. He cannot be

taken to be a trespasser merely on the ground that the other side has manipulated to get the sale deed registered of the suit land. He is also not only in real, physical and actual possession but in fact, his possession is legal possession. Lastly it is contended that otherwise also in view of the fact that both the courts have recorded concurrent finding of fact it cannot be said to be a case where the courts below have committed any material irregularity in exercising its jurisdiction in passing of the impugned orders which calls for interference of this Court under Section 115 of the Civil Procedure Code, 1908.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Both the courts below have recorded a concurrent finding of fact that the respondent is in physical, actual and real possession of the suit land. He is claiming his possession under agreement to sell and further he has come in possession under the said agreement to sell. Though it is not the stage where finally anything has to be decided qua the right, title and interest of the parties as well as the question of the legality of possession but prima-facie, I am satisfied that the approach of the courts below in this case and the findings recorded do not suffer from any infirmity or illegality or any error of jurisdiction said to be committed by the courts below which justifies interference of this Court under section 115 of the Civil Procedure Code, 1908. It is a case where on the basis of material produced by both the parties, the learned trial court has considered it to be a fit case to exercise jurisdiction to grant interim injunction in favour of respondent and the first appellate court in appeal has maintained that order, this court in such matters have very very limited revisional powers under section 115 of the Code of Civil Procedure, 1908. What really the learned counsel for the petitioner contends that on the basis of material which has come on record, the finding recorded by the courts below are erroneous. It is not out of the context to state that howsoever erroneous finding of fact may be of the courts below, this court cannot interfere with those findings under section 115 of the Code of Civil Procedure, 1908, unless the parties have made out a case of material irregularity committed by the court in exercise of its jurisdiction. It is also no more res-integra that even if on the given set of evidence, two views are possible, still this Court cannot interfere with the finding of fact recorded by the courts below. The power of revision has not been correctly

appreciated by the learned counsel for the petitioner and he has further failed to appreciate the fact that only where the courts below committed material irregularity in exercise of their jurisdiction, more precisely when the matter relates to illegality in exercise of jurisdiction by the courts below, then only this Court may revise those orders.

#. In this court, for last more than fifteen days, i.e. the day from which I am hearing the civil revision applications under section 115 of the Code of Civil Procedure, 1908, the learned counsel for the parties argue these civil revision applications as if these are the first appeals before this Court. The scope of revision applications has been sought to be made wide sometimes to the extent of what otherwise this court may not have powers even in the first appeals. In such matters to what extent and under what circumstances the court can interfere, I cannot do better than to refer here two decisions of the Apex Court in the case of M/s. D.L.F. Housing & Construction Company (P) Ltd. v. Sarup Singh & Ors., reported in AIR 1971 SC 2324 and in the case of Managing Director (MIG), Hindustan Aeronautics Ltd. v. Ajit Prasad, Manager (Purchase & Sales), reported in AIR 1973 SC 76.

#. After going through the judgments of the courts below, I am satisfied that the courts below have passed the order against the petitioner on the basis of what they found the respondent to be in physical, actual and real possession of the suit property. The case of the petitioner does not fall under clause (c) of sub-section 1 of Section 115 of the Code of Civil Procedure, 1908 and as such, this court cannot interfere with the orders of the courts below. However, one thing which attracts attention of this court is that while considering the applications for grant of temporary injunction, the courts below are normally having one sided approach. They examine matter from stand point of view of one party to the suit but they never consider that in case where injunction is declined or granted, what corresponding injury will be caused to the other side, i.e. against whom the order is passed in the eventuality where the losing party succeeds in the suit. In the present case, the petitioner has come up with the case that she is a bonafide purchaser of the suit land for consideration. She has invested Rs.50,000/= in purchase of this land and she will not get the possession of the suit land or more precisely she will be deprived of use of the land for all the years to come till the suit is finally decided. It is difficult to say or predict at this stage that she

will fail in the suit or that the other side, the respondent will win the suit. Ultimately at the final stage we do not know which party will succeed. If the petitioner ultimately succeeds then for all these years she will be deprived of use of Rs.50,000/= as well as the land in dispute. So in a given facts it is understandable that the possession of one party is protected on the land in dispute but at the same time, the Court should take care of protecting the corresponding injury likely to be caused in the case of success of other side in the suit. For this injury or more precisely, the loss to be suffered by this the losing party should not be left to further dispute between the parties in the form of raising of issue of facts and leading of evidence on this issue. The courts in its discretion certainly can fix a reasonable amount to be given to the other side by party in whose favour interim injunction has been granted if ultimately he fails in the suit.

##. Though this has not been done by the learned trial or appellate Court, still I do not consider it to be a fit case to interfere with the orders of the courts below on this ground. The respondent - Harilal Kanji Patel is directed to deposit Rs.12,000/= per year in the trial Court on or before first April of each year and on deposit of the said amount, each year, the learned trial Court will invest the same in long term F.D.R. in a scheduled bank. If ultimately this respondent fails in the suit, the amount so deposited by him yearly and kept by the learned trial court in the F.D.R. shall be paid to the petitioner together with accumulated interest thereon and in case of success of respondent, to him with the accrued interest. This amount of Rs.12,000/= has been fixed keeping in view the normal rate of interest on the loans taken from the market by the parties and in this case the petitioner has spent Rs.50,000/= towards the sale consideration of the suit land. So I take Rs.1,000/= to be a reasonable amount of interest on this amount per month which has been converted to Rs.12,000/= as yearly figure. Both these Civil Revision Applications fail and the same are dismissed. The parties are directed to bear their own costs.

(S.K.Keshote, J.)

[sunil]